

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KERI J.

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 3:20-cv-5779-TLF

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of Defendant's denial of her applications for disability insurance benefits ("DIB") and supplemental security income ("SSI").

The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Administrative Law Judge's ("ALJ") decision is reversed and remanded for further proceedings.

I. ISSUES FOR REVIEW

1. Did the ALJ err in evaluating the medical opinion evidence?
2. Did the ALJ err by not evaluating statements from lay witnesses?
3. Did the ALJ provide clear and convincing reasons for discounting Plaintiff's symptom testimony?

1 II. BACKGROUND

2 Plaintiff filed claims for DIB and SSI on October 17, 2017, alleging in both  
3 applications a disability onset date of June 28, 2017. AR 63, 264-70. Plaintiff's claims  
4 were denied initially and upon reconsideration. AR 63, 204-06, 207-09. ALJ Elizabeth  
5 Watson held a hearing on May 28, 2019. AR 83-110. On July 15, 2019, ALJ Watson  
6 issued a decision finding that Plaintiff was not disabled. AR 60-77. On June 9, 2020, the  
7 Social Security Appeals Council denied Plaintiff's request for review. AR 1-7.

8 Plaintiff seeks judicial review of ALJ Watson's July 15, 2019 decision. Dkt. 4.

9 III. STANDARD OF REVIEW

10 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
11 denial of Social Security benefits if the ALJ's findings are based on legal error or not  
12 supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874  
13 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is "such relevant evidence as a  
14 reasonable mind might accept as adequate to support a conclusion." *Biestek v.*  
15 *Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted).

16 IV. DISCUSSION

17 In this case, the ALJ found that Plaintiff had the severe impairments of major  
18 depressive disorder, unspecified anxiety disorder, somatic symptom disorder, right eye  
19 blindness, psoriatic arthritis, fibromyalgia, degenerative disc disease of the thoracic and  
20 cervical spine, and bilateral sacroiliitis. AR 65.

21 The ALJ also found that Plaintiff had the non-severe impairments of  
22 gastroesophageal reflux disease ("GERD"), asthma, irritable bowel syndrome ("IBS"),  
23 status post-cholecystectomy, chronic headaches, and iritis/uveitis. AR 66. The ALJ  
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1 further found that there was insufficient evidence to establish that Plaintiff's urinary  
2 incontinence was a medically determinable impairment. *Id.*

3 A. Whether the ALJ erred in evaluating the medical opinion evidence

4 Plaintiff contends that the ALJ erred in evaluating the opinion of rheumatologist  
5 Lisa Vasanth, M.D. Dkt. 16, pp. 13-15.

6 Under current Ninth Circuit precedent, an ALJ must provide "clear and  
7 convincing" reasons to reject the uncontradicted opinions of an examining doctor, and  
8 "specific and legitimate" reasons to reject the contradicted opinions of an examining  
9 doctor. *See Lester v. Chater*, 81 F.3d 821, 830–31 (9th Cir. 1996).

10 The Social Security Administration changed the regulations applicable to  
11 evaluation of medical opinions, eliminating a hierarchy among medical opinions, but still  
12 requiring ALJs to explain their reasoning and specifically address how they considered  
13 the supportability and consistency of each opinion. *See* 20 C.F.R. §§ 404.1520c,  
14 416.920c; Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed.  
15 Reg. 5844-01 (Jan. 18, 2017).

16 Before and after this change to the regulations, an ALJ's reasoning must be  
17 supported by substantial evidence and free from legal error. *Ford v. Saul*, 950 F.3d  
18 1141, 1153-56 (9th Cir. 2020) (citing *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th  
19 Cir. 2008)); *see also Murray v. Heckler*, 722 F.2d 499, 501–02 (9th Cir. 1983).

20 Under 20 C.F.R. § 404.1520c(a), (b)(1)-(2), the ALJ is required to explain  
21 whether the medical opinion or finding is persuasive, based on whether it is supported  
22 and whether it is consistent. *Brent S. v. Commissioner, Social Security Administration*,  
23 No. 6:20-CV-00206-BR, 2021 WL 147256 at \*5 - \*6 (D. Oregon January 16, 2021).

1           These are the two most important factors in the ALJ's evaluation of medical  
2 opinions or findings; therefore, "[t]he 'more relevant the objective medical evidence and  
3 supporting explanations presented' and the 'more consistent' with evidence from other  
4 sources, the more persuasive a medical opinion or prior finding." *Linda F. v. Saul*, No.  
5 C20-5076-MAT, 2020 WL 6544628, at \*2 (quoting 20 C.F.R. § 404.1520c(c)(1)-(2)).

6           Dr. Vasanth provided an opinion concerning Plaintiff's work-related physical  
7 limitations on May 22, 2019. AR 1129-33. Based on two examinations conducted in  
8 February and May of 2019, Dr. Vasanth diagnosed Plaintiff with psoriatic arthritis, low  
9 back pain with right sided weakness, a history of uveitis, and fibromyalgia. AR 1129.

10          Dr. Vasanth stated that Plaintiff's impairments result in a range of symptoms,  
11 including joint pain and stiffness, reduced range of motion and stiffness in her wrists,  
12 right leg weakness resulting in two falls, incontinence, and hip pain that limits her ability  
13 to walk. *Id.*

14          Dr. Vasanth opined that Plaintiff's symptoms would interfere with her attention  
15 and concentration "very frequently", that Plaintiff would be incapable of performing even  
16 low stress work, and that Plaintiff's walking difficulties would interfere with her ability to  
17 engage in activities of daily living. AR 1130-31. Dr. Vasanth added that Plaintiff would  
18 be absent from work four or more times per month due to her impairments, and would  
19 have a range of other serious work-related limitations. AR 1132-33.

20          The ALJ found Dr. Vasanth's opinion unpersuasive, reasoning that: (1) while Dr.  
21 Vasanth was a treating provider, she had a very limited treatment relationship with  
22 Plaintiff; (2) Dr. Vasanth's opinion was inconsistent with the medical record, and  
23 appeared to be based more on Plaintiff's subjective allegations than the objective  
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1 medical evidence; and (3) Dr. Vasanth's opinion that Plaintiff would have difficulty  
2 performing activities of daily living was inconsistent with Plaintiff's own statements. AR  
3 74-75.

4 With respect to the ALJ's first reason, the fact that Dr. Vasanth only examined  
5 Plaintiff twice is not, in and of itself, a valid reason for discounting her opinion, especially  
6 in light of the revised regulations, which eliminate the regulatory distinction between  
7 "treating" and "examining" opinions, and provide that an examining source "may have a  
8 better understanding" of an individual's limitations. 20 C.F.R. §§ 404.1520c(c)(3)(v),  
9 416.920c(c)(3)(v); *Yeakey v. Colvin*, 2014 WL 3767410 at \*6 (W.D. Wash. July 31,  
10 2014) ("When considering an examining physician's opinion . . . it is the quality, not the  
11 quantity of the examination that is important. Discrediting an opinion because the  
12 examining doctor only saw claimant one time would effectively discredit most, if not all,  
13 examining doctor opinions.")

14 As for the ALJ's second reason, the new regulations require the ALJ to consider  
15 the "consistency" of a medical source's opinion with the evidence from other medical  
16 sources and nonmedical sources in the claim; the more consistent the medical opinion  
17 is with this evidence, the more persuasive the medical opinion will be. 20 C.F.R. §§  
18 404.1520c(c)(2), 416.920c(c)(2); *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014)  
19 (An ALJ may give less weight to medical opinions that conflict with treatment notes).

20 The new regulations also require an ALJ to consider the "supportability" of a  
21 medical opinion, meaning that the "more relevant the objective medical evidence and  
22 supporting explanations presented by a medical source are to support his or her  
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1 medical opinion(s) ... the more persuasive the medical opinions" will be. 20 C.F.R. §§  
2 404.1520c(c)(1), 416.920c(c)(1).

3 Here, the ALJ found that despite Dr. Vasanth's opinion, Plaintiff's attention and  
4 concentration were frequently intact, and there is no evidence that Plaintiff frequently fell  
5 down due to her physical impairments. AR 74.

6 There is no evidence that Dr. Vasanth relied more on Plaintiff's allegations than  
7 her own findings, and the ALJ has not cited any evidence consistent with her conclusion  
8 that Plaintiff's attention and concentration were typically intact or her broader conclusion  
9 that Dr. Vasanth's opinion was inconsistent with the medical record. *Embrey v. Bowen*,  
10 849 F.2d 418, 421-22 (9th Cir. 1988) ("The ALJ must do more than offer his  
11 conclusions. He must set forth his own interpretations and explain why they, rather than  
12 the doctors', are correct."); *Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th Cir. 2014)  
13 (an ALJ may not reject an opinion in a vague or conclusory manner).

14 Further, the results of mental status examinations to this effect would not  
15 necessarily be revealing, given that Plaintiff's attention and concentration difficulties  
16 stem from her physical, rather than mental, impairments. The Court also notes that the  
17 record does contain evidence concerning Plaintiff's falling episodes. AR 1040.

18 Regarding the ALJ's third reason, a conflict between a treating source's opinion  
19 and a claimant's activity level can serve as a valid for rejecting the physician's opinion.  
20 *Ford v. Saul*, 950 F.3d 1141, 1155 (9th Cir. 2020).

21 However, disability claimants should not be penalized for attempting to lead  
22 normal lives in the face of their limitations. See *Reddick v. Chater*, 157 F.3d 715, 722  
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1 (9th Cir. 1998), citing *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir.1987) (a disability  
2 claimant need not “vegetate in a dark room” in order to be deemed eligible for benefits).

3 Here, the ALJ found that Dr. Vasanth’s opinion that Plaintiff’s impairments would  
4 interfere with her ability to engage in activities of daily living was inconsistent with  
5 Plaintiff’s statements to examining psychologist Gregory Cole, Ph.D. that she was able  
6 to perform chores, prepare simple meals, shop for groceries twice a month, travel  
7 independently, watch television, and listen to music. AR 746-47, 1131.

8 Plaintiff’s ability to engage in these routine activities of daily living, which are  
9 limited by pain and fatigue, does not constitute a valid reason for discounting Dr.  
10 Vasanth’s opinion. AR 746; *Diedrich v. Berryhill*, 874 F.3d 634, 643 (9th Cir. 2017)  
11 (“House chores, cooking simple meals, self-grooming, paying bills, writing checks, and  
12 caring for a cat in one’s own home, as well as occasional shopping outside the home,  
13 are not similar to typical work responsibilities.”).

14 Accordingly, the ALJ has not provided valid reasons, supported by substantial  
15 evidence for discounting Dr. Vasanth’s opinion.

16 B. Whether the ALJ properly evaluated evidence from lay witnesses

17 Plaintiff contends that the ALJ erred by not evaluating lay witness statements  
18 from Plaintiff’s spouse, daughter, and mother. Dkt. 16, pp. 15-16; AR 296-303, 364-68.

19 The ALJ noted that, under the new regulations, she was not required to evaluate  
20 this evidence, but nevertheless stated that these statements were not persuasive,  
21 reasoning that they were consistent with Plaintiff’s other unpersuasive testimony. AR  
22 73-74.

1 For disability claims filed on or after March 27, 2017, such as this one, an ALJ is  
2 “not required to articulate” how he or she evaluated evidence from non-medical sources  
3 such as educational personnel, public and private social welfare agency personnel, and  
4 other lay witnesses. 20 C.F.R. §§ 404.1502(e); 404.1520c(d).

5 Accordingly, even if the ALJ erred in evaluating this evidence, any error would be  
6 harmless, since the ALJ was not required to evaluate it at all. *Molina v. Astrue*, 674 F.3d  
7 1104, 1115 (9th Cir. 2012) (Harmless error principles apply in the Social Security  
8 context).

9 C. Whether the ALJ erred in evaluating Plaintiff’s testimony

10 Plaintiff contends that the ALJ erred by not providing clear and convincing  
11 reasons for discounting her symptom testimony. Dkt. 16, pp. 3-13.

12 In evaluating Plaintiff’s testimony and the medical record, the ALJ found that  
13 Plaintiff’s iritis and uveitis were non-severe impairments, that Plaintiff’s urinary  
14 incontinence was not a medically determinable impairment, and that Plaintiff’s eye  
15 symptoms were managed effectively with medication. AR 65-66, 70-72.

16 The record contains evidence submitted by Plaintiff after the ALJ issued her  
17 decision. AR 8-20, 37-59. The Social Security Appeals Council denied review of  
18 Plaintiff’s claim and opted not to exhibit this evidence, reasoning that it did not relate to  
19 the period at issue. AR 2.

20 This Court must consider this additional material in determining whether the  
21 ALJ’s decision is supported by substantial evidence. See *Brewes v. Commissioner of*  
22 *Social Security*, 682 F.3d 1157, 1160 (9th Cir. 2012) (when a claimant submits evidence  
23 for the first time to the Appeals Council, which considers that evidence in denying  
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1 review of the ALJ's decision, the new evidence is part of the administrative which the  
 2 district court must consider in determining whether the Commissioner's decision is  
 3 supported by substantial evidence).

4 The evidence in question consists of treatment notes from 2019 indicating that  
 5 Plaintiff had ongoing difficulties with her eyes and worsening urinary tract infection and  
 6 incontinence problems. AR 8-20, 37-59. On remand, the ALJ shall re-evaluate Plaintiff's  
 7 visual and urinary symptoms in light of this new evidence.

#### 8 D. Remand for Further Proceedings

9 Plaintiff asks this Court to remand this case for an award of benefits. Dkt, 16, pp.  
 10 17-18. "The decision whether to remand a case for additional evidence, or simply to  
 11 award benefits[,] is within the discretion of the court." *Trevizo v. Berryhill*, 871 F.3d 664,  
 12 682 (9th Cir. 2017) (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). If  
 13 an ALJ makes an error and the record is uncertain and ambiguous, the court should  
 14 remand to the agency for further proceedings. *Leon v. Berryhill*, 880 F.3d 1041, 1045  
 15 (9th Cir. 2017). Likewise, if the court concludes that additional proceedings can remedy  
 16 the ALJ's errors, it should remand the case for further consideration. *Revels*, 874 F.3d  
 17 at 668.

18 The Ninth Circuit has developed a three-step analysis for determining when to  
 19 remand for a direct award of benefits. Such remand is generally proper only where

20 "(1) the record has been fully developed and further administrative  
 21 proceedings would serve no useful purpose; (2) the ALJ has failed to  
 22 provide legally sufficient reasons for rejecting evidence, whether claimant  
 23 testimony or medical opinion; and (3) if the improperly discredited  
 24 evidence were credited as true, the ALJ would be required to find the  
 25 claimant disabled on remand."

## CONCLUSION

Dated this 3rd day of September, 2021.

Theresa L. Fricke  
United States Magistrate Judge